

Brian E. Pastuszewski (*pro hac vice*)  
*bpastuszewski@goodwinprocter.com*  
Inez H. Friedman-Boyce (*pro hac vice*)  
*ifriedmanboyce@goodwinprocter.com*  
Brian C. Devine (SBN# 222240)  
*bdevine@goodwinprocter.com*  
**GOODWIN PROCTER LLP**  
53 State Street  
Boston, MA 02109  
Tel.: 617-570-1000  
Fax: 617-523-1231

Lloyd Winawer (SBN# 157823)  
*lwinawer@goodwinprocter.com*  
**GOODWIN PROCTER LLP**  
601 S Figueroa St., 41st Floor  
Los Angeles, California 90017  
Tel.: 213.426.2500  
Fax: 213.623.1673

*Attorneys for Defendants:*  
Countrywide Financial Corp., Countrywide  
Securities Corp., Countrywide Capital Markets, LLC,  
Countrywide Home Loans, Inc., Countrywide Home  
Loans Servicing LP, CWMBS, Inc., CWALT, Inc.,  
CWABS, Inc., and CWHEQ, Inc.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

IN re COUNTRYWIDE FINANCIAL  
CORP. MORTGAGE-BACKED  
SECURITIES LITIGATION CASES

Case No. 11-ML-02265-MRP (MANx)  
**COUNTRYWIDE DEFENDANTS'  
NOTICE OF REQUEST AND  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF SUPPLEMENTAL  
MEMORANDUM IN SUPPORT OF  
THE AMENDED MOTION TO  
STRIKE AND TO DISMISS**

Date: January 26, 2012  
Time: 1:00 p.m.  
Courtroom: 12  
Judge: Hon. Mariana R. Pfaelzer

THRIVENT FINANCIAL FOR  
LUTHERANS, *et al.*,  
*Plaintiffs,*  
  
v.  
COUNTRYWIDE FINANCIAL  
CORPORATION, *et al.*,  
*Defendants.*

Case No. 11-07154-MRP-MAN

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that Defendants Countrywide Financial Corporation, Countrywide Securities Corporation, Countrywide Capital Markets, Countrywide Home Loans, Inc., Countrywide Home Loans Servicing, LP, CWMBS, Inc., CWALT, Inc., CWABS, Inc., and CWHEQ, Inc. (collectively, the “Countrywide Defendants”), by and through their attorneys of record, hereby request that the Court take judicial notice, pursuant to Federal Rule of Evidence 201 and supporting case law, of the documents and facts listed below in connection with their Supplemental Memorandum in Support of the Countrywide Defendants’ Amended Motion to Strike and to Dismiss (“Supplemental Memorandum”).

**EXHIBIT**

**DESCRIPTION**

- |   |   |
|---|---|
| 1 | Excerpt from Transcript of Hearing, <i>In re Countrywide Fin. Corp. Sec. Litig.</i> , No. CV 07-05295 MRP (MANx) (C.D. Cal. Feb. 25, 2011)  |
| 2 | Press Release, Thrivent Financial for Lutherans, Thrivent Financial Highlights Strength and Community Outreach at Report to the Community (June 2, 2009)                          |
| 3 | Excerpt from Thrivent Financial 2008 Statutory Annual Statement   |
| 4 | Randy Myers, <i>One Year Later</i> , THRIVENT MAGAZINE (Fall 2009)  |
| 5 | Order re: Defendants’ Motions to Dismiss, <i>Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.</i> , No. 10-CV-05699, slip. op. (C.D. Cal. Jan. 20, 2011) |

This request is based on the attached Memorandum of Points and Authorities in support thereof, the papers, records, and pleadings on file herein and upon any additional argument or evidence permitted at the hearing on the Countrywide Defendants’ motion to dismiss.

1 Dated: November 4, 2011

**GOODWIN PROCTER LLP**

2 /s/ Brian E. Pastuszenski

Brian E. Pastuszenski (*pro hac vice*)

3 Lloyd Winawer (State Bar No. 157823)

Inez H. Friedman-Boyce (*pro hac vice*)

4 Brian C. Devine (State Bar No. 222240)

5 *Counsel for the Countrywide Defendants*

**MEMORANDUM OF POINTS AND AUTHORITIES**

Federal Rule of Evidence 201 provides that a court may take judicial notice of a fact “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). As set forth below, the documents submitted in support of the Countrywide Defendants’ Supplemental Memorandum are properly subject to judicial notice.

Exhibit 1 is an excerpt from the transcript of the hearing that was held by this Court in *In re Countrywide Fin. Corp. Sec. Litig.*, No. 07-CV-05295-MRP, on February 25, 2011. This Court may take judicial notice of the proceedings and pleadings filed in related actions, as well as orders and decisions made by it and other courts. *See San Francisco Baykeeper v. West Bay Sanitary Dist.*, 2011 WL 1990637, at \*6 (N.D. Cal. May 23, 2011) (court takes judicial notice of hearing transcript from case); *Kuan v. United States Customs Serv.*, 2009 U.S. Dist. LEXIS 126574, at \*4 n.3 (C.D. Cal. Dec. 16, 2009) (“The Court may take judicial notice of matters of public record, including court records in a related proceeding.”); *In re Edward Jones Holders Litig.*, 453 F. Supp. 2d 1210, 1217 n.8 (C.D. Cal. 2006) (taking judicial notice of related proceedings). For this same reason, the Court may take judicial notice of Exhibit 5, which is a copy of this Court’s Order re: Defendants’ Motions to Dismiss in *Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, No. 10-CV-05699, slip. op. (C.D. Cal. Jan. 20, 2011). *See Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995), *rev’d on other grounds*, 520 U.S. 548 (1997) (“[j]udicial notice is properly taken of orders and decisions made by other courts or administrative agencies”)

Exhibit 2 is a press release. Courts will regularly take judicial notice of company press releases and other publicly available documents on motions to

1 dismiss. *See, e.g., In re Washington Mut., Inc. Sec., Deriv. & ERISA Litig.*, 259  
2 F.R.D. 490, 495 (W.D. Wash. 2009) (taking judicial notice of SEC filings,  
3 conference call transcripts, and Washington Mutual's press releases); *In re Wet Seal,*  
4 *Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1157-60 (C.D. Cal. 2007) (taking judicial  
5 notice of various transcripts, press releases, SEC filings, Canadian securities filings,  
6 and newspaper articles, because they were either referenced and relied on in the  
7 complaint, or, as public records, were of "undisputed authenticity").

8 Similarly, Exhibit 3 is an excerpt<sup>1</sup> from a recent Annual Statement issued by  
9 Thrivent Financial for Lutherans, a publicly available document that was filed with  
10 a state government agency. Accordingly, this document is a matter of public record,  
11 analogous to SEC filings, and this Court may properly take judicial notice of its  
12 contents. *Cf. In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 863-64 (N.D.  
13 Cal. 2004) (taking judicial notice of information that was publicly available at the  
14 time the defendant company made the allegedly false statements, including press  
15 releases and transcripts of conference calls). The Court may take judicial notice of  
16 information that is publicly available and "capable of accurate and ready  
17 determination by resort to a source whose accuracy cannot be reasonably  
18 questioned." *In re Hansen Natural Corp. Sec. Litig.*, 527 F. Supp. 2d 1142, 1150  
19 n.2 (C.D. Cal. 2007) (citation omitted); *see also* Fed. R. Evid. 201.

20 Exhibit 4 is an article from a publication that is published on a regular basis  
21 by one of the Plaintiffs. Judicial notice of this article is appropriate because it is  
22 publicly available and its contents are not subject to reasonable dispute. *See Von*  
23 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir.  
24 2010) (holding that judicial notice may be taken of newspaper articles at the motion  
25 to dismiss stage in order to "indicate what was in the public realm at the time, not

26 <sup>1</sup> In the interests of efficiency, the Countrywide Defendants have submitted and  
27 excerpt from the relevant Annual Statement. Of course, the Countrywide  
28 Defendants will submit the document in its entirety at the Court's request.

whether the contents of those articles were in fact true”) (internal citation omitted);  
*In re Rackable Sys., Inc. Sec. Litig.*, 2010 WL 3447857, at \*3 (N.D. Cal. Aug. 27, 2010) (taking judicial notice of newspaper articles).

**CONCLUSION**

For all of the above reasons, the Countrywide Defendants respectfully request that the Court take judicial notice of Exhibits 1-5 filed in support of its Supplemental Memorandum.

Dated: November 4, 2011

**GOODWIN PROCTER LLP**

/s/ Brian E. Pastuszenski

Brian E. Pastuszenski (*pro hac vice*)

Inez H. Friedman-Boyce (*pro hac vice*)

Brian C. Devine (State Bar No. 222240)

Lloyd Winawer (State Bar No. 157823)

*Counsel for the Countrywide Defendants*

**PROOF OF SERVICE**

I, Gareth Oania, declare:

I am employed in County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 S. Figueroa St., 41st Floor, Los Angeles, CA 90017.

On **November 4, 2011**, I served the following document by placing a true copy thereof in a sealed envelope(s) on the persons listed on the service list:

**COUNTRYWIDE DEFENDANTS' NOTICE OF REQUEST AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE AMENDED MOTION TO STRIKE AND TO DISMISS**

- ☐ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.
- ☐ (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated above, with fees for overnight delivery paid or provided for.
- ☐ (MESSENGER SERVICE) I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed and provided them to a professional messenger service for service. A separate Personal Proof of Service provided by the professional messenger service will be filed under separate cover.
- ☐ (FACSIMILE) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- ☐ (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



1 ☒ (CM/ECF Electronic Filing) I caused the above document(s) to be  
2 transmitted to the office(s) of the addressee(s) listed above by electronic  
3 mail at the e-mail address(es) set forth above pursuant to  
4 Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated  
5 automatically by the ECF system upon completion of an electronic filing.  
The NEF, when e-mailed to the e-mail address of record in the case, shall  
6 constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of  
7 the NEF shall be attached to any document served in the traditional manner  
8 upon any party appearing pro se."

9 I declare under penalty of perjury that I am employed in the office of a  
10 member of the bar of this Court at whose direction this service was made and that  
11 the foregoing is true and correct.

12 Executed on **November 4, 2011**, at Los Angeles, California.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Gareth Oania

(Type or print name)



(Signature)



## SERVICE LIST

1		
2	Blair A. Nicholas	<i>Attorneys for Plaintiffs</i>
3	Timothy A. DeLange	Thrivent Financial For Lutherans;
4	<b>Bernstein Litowitz Berger &amp; Grossmann LLP</b>	Thrivent Life Insurance Company;
5	12481 High Bluff Drive	Thrivent Balanced Fund;
6	Suite 300	Thrivent Core Bond Fund;
7	San Diego, CA 92130	Thrivent Income Fund;
8	Telephone: 858-793-0070	Thrivent Limited Maturity Bond Fund;
9	Facsimile: 858-793-0323	Thrivent Balanced Portfolio;
10	blairn@blbglaw.com	Thrivent Bond Index Portfolio;
11	timothyd@blbglaw.com	Thrivent Limited Maturity Bond Portfolio;
12	Bruce D. Bernstein	Thrivent Financial Defined Benefits Plan Trust;
13	David L. Wales	Thrivent Financial For Lutherans Foundation
14	Gerald H. Silk	
15	Jai K. Chandrasekhar	
16	Lauren A. McMillen	
17	<b>Bernstein Litowitz Berger &amp; Grossmann LLP</b>	
18	1285 Avenue of the Americas	
19	38 <sup>th</sup> Floor	
20	New York, NY 10019	
21	Telephone: 212-554-1400	
22	Facsimile: 212-554-1444	
23	bruce@blbglaw.com	
24	dwales@blbglaw.com	
25	jerry@blbglaw.com	
26	jai@blbglaw.com	
27	Lauren@blbglaw.com	
28	Brian F. Rice	
	Karin E. Peterson	
	<b>Rice Michels &amp; Walther LLP</b>	
	10 Second St., NE	
	Suite 206	
	Minneapolis, MN 55413	
	Telephone: 612-676-2300	
	Facsimile: 612-676-2319	
	Matthew W. Close	<i>Attorneys for Defendant</i>
	<b>O'Melveny and Myers LLP</b>	Bank of America Corp.;
	400 South Hope Street, 18 <sup>th</sup> Floor	BAC Home Loans Servicing, L.P.;
	Los Angeles, CA 90071	NB Holdings Corporation
	Telephone: 212-430-6000	
	Facsimile: 213-430-6407	
	mclose@omm.com	
	Bradley J. Butwin	
	William J. Sushon	
	Jonathan Rosenberg	
	<b>O'Melveny &amp; Myers</b>	
	7 Times Square	
	New York, NY 10036	
	Telephone: 212-326-2000	

1	Facsimile: 212-326-2061 bbutwin@omm.com	
2	wsushon@omm.com	
3	jrosenberg@omm.com	
4	David L. Hashmall <b>Hinshaw &amp; Culbertson</b> 3100 Piper Jaffray Tower 222 South 9 <sup>th</sup> Street Minneapolis, MN 55402 Telephone: 612-333-3434	
7	A. Matthew Ashley Allison L. Libeu <b>Irell &amp; Manella LLP</b> 840 Newport Center Drive Suite 400 Newport Beach, CA 92660 Telephone: 949-760-0991 Facsimile: 949-760-5200 mashley@irell.com alibeu@irell.com	<i>Attorneys for Defendant</i> Angelo Mozilo
12	David Siegel Holly L. Gershow <b>Irell &amp; Manella LLP</b> 1800 Avenue of the Stars Suite 900 Los Angeles, CA 90067 Telephone: 310-277-1010 Facsimile: 310-203-7199 dsiegel@irell.com hgershow@irell.com	
18		
19	Andrew M. Luger John W. Ursu Erin Sindberg Porter <b>Greene Espel PLLP</b> 200 S. 6 <sup>th</sup> Street Suite 1200 Minneapolis, MN 55402 Telephone: 612-373-0380 Facsimile: 612-373-0929	
24	Frank M. Scaduto Michael D. Torpey <b>Orrick Herrington &amp; Sutcliffe LLP</b> The Orrick Building 405 Howard Street San Francisco, CA 94105 Telephone: 415-773-5700 Facsimile: 415-773-5759 fscaduto@orrick.com	<i>Attorneys for Defendant</i> David A. Sambol

1 mtorpey@orrick.com  
2 Michael C. Tu  
3 **Orrick Herrington & Sutcliffe LLP**  
4 777 South Figueroa Street  
5 Suite 3200  
6 Los Angeles, CA 90017  
7 Telephone: 213-629-2020  
8 Facsimile: 213-612-2499  
9 mtu@orrick.com  
10 Brooke D. Anthony  
11 Courtland C. Merrill  
12 Vincent D. Louwagie  
13 **Anthony Ostlund Baer & Louwagie PA**  
14 90 South 7<sup>th</sup> Street  
15 Suite 3600  
16 Minneapolis, MN 55402  
17 Telephone: 612-349-6969  
18 Facsimile: 612-349-6996  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28